

WDE SPECIAL EDUCATION

Out of District Placements

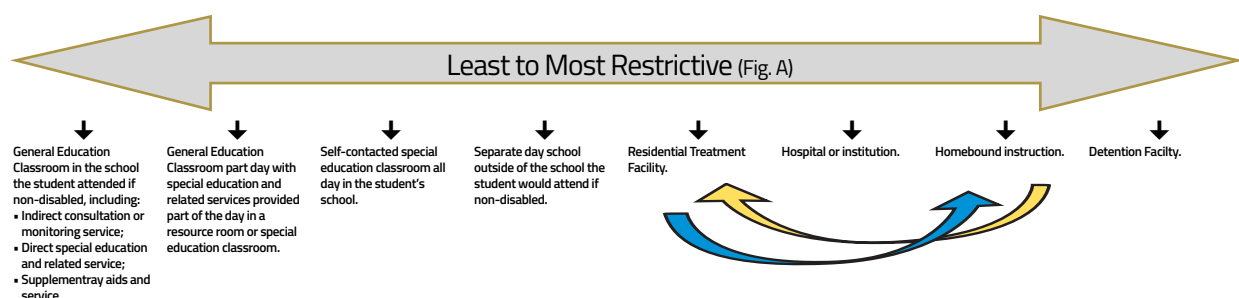
IEP Team Placements.....	1
Court Ordered Placements.....	5
Group Home Placements.....	8
Medically Necessary Placements.....	8
ODP Responsibility for FAPE and Funding (Appendix A).....	11

Out-of-district placement of students with disabilities can be challenging for school districts and residential treatment facilities. There can be uncertainty around where the district’s responsibility for FAPE and required procedural duties ends, and the facility’s responsibility begins. In some cases, there may be questions about identification of the student’s resident district, guardianship, data reporting, transfer of records, and much more. This guidance document will address three types of out-of-district placements for which the resident district maintains responsibility for FAPE: IEP Team placements, Court Ordered placements, and Medically Necessary Placements. There is also a section on Group Home placements. The information contained in this document is provided as informal guidance and is not legally binding, but represents an interpretation by the Wyoming Department of Education of the Individuals with Disabilities Act (IDEA), Wyoming Department of Education (WDE) Chapter 7 Rules: Services for Children with Disabilities, Wyoming Statutes, Office of Special Education Programs (OSEP) guidance letters, relevant case law, and WDE Special Education Programs Policies and Procedures.

IEP Team Placements

School districts and public agencies must ensure that a continuum of placements is available to meet the needs of children with disabilities for special education and related services. A district’s duty to offer a residential placement hinges on whether the student requires a residential placement in order to receive Free Appropriate Public Education (FAPE). Failure to consider a residential placement despite a student’s identified need can potentially amount to a denial of FAPE. The continuum of alternative placements includes: the general education classroom, resource room, self-contained special education classroom, separate school, residential treatment facility, hospital or institution, homebound instruction, and detention facilities. *34 CFR §300.115(a)(b)(1)*.

Continuum of Alternative Placements under the IDEA



There is sometimes confusion around which educational environment is truly more restrictive—homebound instruction or placement in a residential treatment facility. The answer is: *It depends.*

For a nondisabled student, a regular classroom placement has two main components:

1. interaction with nondisabled peers; and
2. attending school in the community in which he/she lives

In order to consider Least Restrictive Environment (LRE), the IEP team must determine which of these components is more critical in the decision to place the student. If interacting with nondisabled peers is more critical for the child, placement in a residential treatment facility is considered less restrictive than homebound instruction. If attending school in the community where the child lives is more critical, homebound instruction is considered less restrictive than placement in a residential treatment facility.

Things to Consider Prior to IEP Team Placement

- Inclusion efforts - Consider the steps the school district has taken to include the child in a special class within a regular or local community-based school setting, including curriculum, supplementary aids and services, and mainstreaming opportunities.
- Comparison of likely benefits - Compare the educational benefits the child will receive in the local placement (with supplementary aids and services) to the educational benefits the child will receive in the more segregated setting of a residential placement.
- Mainstreaming effects - Consider the possible effects the child's inclusion may have on the education of the other students in the local placement class and in the local school.
- Physical or emotional conditions - Determine if the child was experiencing physical or emotional conditions which fundamentally interfered with the child's ability to learn in a local placement.
- Behavior or regression - Assess whether the child's behavior was so inadequate, or whether regression was occurring to such a degree, as to fundamentally interfere with the child's ability to learn in a local placement.
- Prior assessments - Ascertain whether any health or educational professionals actually working with the child concluded that the child needed residential placement for educational purposes.
- Past experience - Review past experience to see if a need for residential placement was established.
- Purpose of placement - Consider whether the demand for residential placement is primarily to address educational needs.

Behavior problems do not become a basis for residential placement unless they become so severe that they interfere with the student's ability to obtain an educational benefit in a typical school setting. Typically, such behavior threatens the welfare of the student or other individuals and cannot be effectively controlled anywhere other than a 24-hour environment with specially trained staff. See *Greater Albany School District, 49 IDELR 56 (SEA OR 2007)*.

Residential placement cannot be justified based solely on personal issues, such as student's problems with his or her family and other relationships, involvement with counter-culture groups, or violation of social norms. Standing alone, truancy does not provide a basis for residential placement. Likewise, juvenile delinquency is not automatic grounds for residential placement.

Before an IEP team considers placement in a specific residential treatment facility, they must ensure that the facility has the capacity to deliver all the special education and related services required to ensure FAPE for the student. If the IEP team reaches a decision to place a child in a residential treatment facility, the decision must be explained in Prior Written Notice.

School District Responsibilities for IEP Team Placements

As per IDEA regulations and Chapter 7 Rules: Services for Children with Disabilities Section 5, the school district is responsible for completing the following actions related to the placement:

- If utilizing an electronic records management system, add designated residential treatment facility staff members as team members on the system.
- Initiate action to develop, review, or revise the IEP.
- Schedule a change of placement IEP meeting.
- Send Notice of Meeting to required members of the IEP team.
- Collaborate with residential treatment facility staff to develop a proposed IEP, ensuring that the IEP is reasonably calculated to enable the student to make appropriate progress, in light of his or her unique circumstances.
- Provide procedural safeguards and an explanation to the parent(s).
- Conduct the IEP meeting.
- Write and disseminate the IEP.
- Complete and send Prior Written Notice, noting the change of placement.
- Evaluate student progress reports to ensure the student is making adequate or expected progress on annual goals. Reconvene the IEP team, as necessary.
- Ensure the student receives FAPE throughout the placement.
- Obtain consent for evaluation, as necessary. Develop an assessment plan.
- Conduct required assessment(s), or arrange with a third party to conduct required assessment(s).
- Accurately report student data for IEP Team-placed students on all WDE data collections

Before the school district places a child with a disability in a residential treatment facility, the school district or public agency must initiate and conduct a meeting to develop a proposed IEP for the child. The district must ensure that a representative of the facility attends the meeting and has input into the development of the proposed IEP. If a representative cannot attend, the school district must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. *WDE Policies and Procedures: Responsibility for Children in Private Schools II(B)*. Data should be provided in the PLAFFP to support both academic and functional needs, including behavioral and emotional concerns.

The determination of whether a child requires therapeutic and habilitation services, including the therapeutic and habilitation components of a residential treatment program, as related services under the IDEA is made on an individual basis by the child's IEP team. In situations where the IEP team determines that the child's educational needs are inseparable from the child's other needs or the child is determined, on an individual basis, to require the therapeutic and habilitation components of a residential program in order to receive a free appropriate public education, in general, these services would be considered to be related services under the IDEA. *OSEP Memo 05-08, March 17, 2005*.

The district must ensure that the IEP team includes the child's parents, a regular education teacher, a special education teacher, a representative of the private school or facility, an individual who can interpret evaluation results, a district representative, and, whenever appropriate, the child. The district representative must be qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities. He or she must also be knowledgeable about the general education curriculum, and be knowledgeable about the availability of district resources. *34 CFR §300.321*. Based upon the proposed IEP and the private facility's ability to implement the proposed IEP, a placement decision should then be made that will deliver FAPE to the student in the least restrictive environment.

Throughout the child's placement, the school district remains the parent's primary point of contact. Since the district is ultimately responsible for FAPE, it is important that any communication among parties related to the IEP is routed through the school district. The school district also retains responsibility for the student's online records. Residential facility staff can be added as team members within the online system, but they should not create, duplicate, or modify online student records, other than to report progress on IEP goals.

Residential Treatment Facility Responsibilities for IEP Team Placements

As per IDEA regulations and Chapter 7 Rules: Services for Children with Disabilities Section 5, the residential treatment facility is responsible for completing the following actions related to the placement:

- Notify the child's school district or public agency of the child's arrival at the facility.
- Collaborate with the school district to develop a proposed IEP, ensuring that the facility will be able to implement special education services, related services, and progress monitoring for the child.
- Assist the school district in providing procedural safeguards and an explanation to the parent(s), as requested.
- Assist the school district in conducting the IEP meeting, as requested.
- Assist the school district in writing and disseminating the IEP, as requested.
- Monitor student progress on annual goals and ensure the student is making adequate or expected progress. Disseminate progress reports to parents and the school district, as specified in the IEP.
- Request that the school district reconvene the IEP team, as necessary.
- If re-evaluation or additional assessments are required, work with the school district to develop an assessment plan.
- Work with the school district to conduct required assessment(s), as requested, and if the facility has the resources and expertise to do so.

In the early months of a placement, as staff members at the residential facility become more familiar with the student, they may work through the school district to request that the IEP team reconvene to reconsider the special education and related services needs of the child.

Disagreements about the provision of FAPE for students placed in residential treatment facilities by the IEP teams are subject to the due process procedures outlined in the IDEA and the state complaint procedures in the federal regulations implementing the IDEA. *34 C.F.R. §§300.151, 300.506, and 300.508*, WDE Policies and Procedures: Responsibility for Children in Private Schools II(C).

Data Collection

Students placed in residential treatment facilities are still the responsibility of the student’s resident school district and must be reported by the district with a primary enrollment record on the WDE-684. If the district has an active IEP for the student, then the district will report the SPED data. When entering data for IEP Team-placed students on the WDE-684, districts must use the following codes:

WDE-684 Data Element	Code for IEP Team-Placed Students
Student Concurrent Enrollment	N
Service School ID	Service School IDs for approved Wyoming Institutional Schools can be found in the WDE Directory under Other Accredited Education Sites. Valid Service School IDs may also be obtained by contacting the WDE Collection Steward at 307-777-8751.
Student Environment	RF – Residential Facility
Exit Type	Null 469 – Placed in an Institution If a student continues to receive educational services provided by the institution, the student’s resident district must continue to report a primary (non-concurrent) enrollment record for the student and remains accountable for the student.

Court-Ordered Placements

A concern expressed by some school districts is that students are sometimes court ordered to residential treatment facilities, unbeknownst to the district. This should never happen, because there are statutory regulations requiring a representative of the district to participate in the pre-placement process. The district may be apprised of the student’s placement via an invitation to participate on a multidisciplinary team, a records request, or even by word of mouth. Regardless of how a district becomes aware that a child with a disability has been court ordered to a residential treatment facility, it is incumbent upon the district to immediately contact the facility and initiate action to develop, review, or revise the child’s IEP.

Wyoming statutes require courts to appoint a multidisciplinary team (MDT) in all child abuse and neglect, child in need of supervision (CHINS) and delinquency cases. MDTs review the child’s personal and family history; school, health and Department of Family Services records; and any other pertinent information for the purpose of making placement decisions and other written recommendations to the juvenile court. *W.S. §§14-3-427(e), 14-6-427(e), 14-6-227(f).*

Per W.S. §14-6-227(c), the multidisciplinary team shall include the following:

- (i) the child’s parent, parents or guardian;
- (ii) a representative of the school district who has direct knowledge of the child and, **if the child receives special education, is a member of the child’s individualized education plan team;**
- (iii) a representative of the department;
- (iv) the child’s psychiatrist, psychologist or mental health professional;
- (v) the district attorney or his designee;

- (vi) the child's attorney or guardian ad litem, if one is appointed by the court;
- (vii) the volunteer lay advocate, if one is appointed by the court; and
- (viii) the foster parent.

The IEP team member who serves as a member of the multidisciplinary team should ensure that, if a residential treatment facility placement is recommended, the facility has the resources and expertise required to implement the child's IEP.

In the placement order the court shall declare the child's school district or school districts of residency in any district or districts which it deems proper in the best interests of the child. The declaration by the court shall be binding upon the school districts. *W.S. §21-13-315(h)*. In the event that the court order does not specify the child's district of residency, the district where the child's parent(s) reside at the time of placement shall be designated as the resident district.

Resident District Responsibilities for Court Ordered Placements

As per IDEA regulations and Chapter 7 Rules: Services for Children with Disabilities Section 5, the resident district is responsible for completing the following actions related to court ordered placements of students with disabilities:

- Ensure that a member of the child's IEP team serves as a member of the district court Multi-Disciplinary Team.
- If utilizing an electronic records management system, add designated residential treatment facility staff members as team members on the system.
- Initiate action to develop, review, or revise the IEP.
- Schedule change of placement IEP meeting.
- Send Notice of Meeting to required members of the IEP team.
- Collaborate with residential treatment facility staff to develop a proposed IEP, ensuring that the IEP is reasonably calculated to enable the student to make appropriate progress, in light of his or her unique circumstances.
- Provide procedural safeguards and an explanation to the parent(s).
- Conduct the IEP meeting.
- Write and disseminate the IEP.
- Complete and send Prior Written Notice, noting the change of placement.
- Evaluate student progress reports to ensure the student is making adequate or expected progress on annual goals. Reconvene the IEP team, as necessary.
- Ensure the student receives FAPE throughout the placement
- Obtain consent for evaluation, as necessary. Develop an assessment plan.
- Conduct required assessment(s), or arrange with a third party to conduct required assessment(s)
- Accurately report student data for court-placed students on all WDE data collections

Court ordered placements occur throughout the calendar year, including periods when schools are not in session. The resident district must ensure that a designated district representative is identified to fulfill all resident district responsibilities for court ordered placements if the need arises during school breaks. The resident district should provide the name and contact information of the designated district representative to the county district attorney responsible for juvenile court ordered placements.

The responsibility for re-evaluation remains with the resident district throughout the child’s placement. If a student is court ordered to a residential facility after an evaluation has been initiated, the resident district must work with the facility to ensure that the required assessment(s) are completed in a timely manner.

It is also important to note that a district’s responsibility for Child Find includes students who are placed in residential facilities. If a non-disabled student is placed in a residential facility, the resident district, parents, and facility representatives should consider whether the student might be a student with a disability and require specially designed instruction. If that determination is made, the district is responsible for obtaining informed parental consent and ensuring that a comprehensive evaluation is completed.

Data Collection

Students placed in a residential treatment facility by courts are still the responsibility of the student’s resident school district and must be reported by the district with a primary enrollment record on the WDE-684. If the district has an active IEP for the student, then the district will report the SPED data. When entering data for court-placed students on the WDE-684, districts must use the following codes:

WDE-684 Data Element	Code for Court-Placed Students
Student Concurrent Enrollment	N
Service School ID	Service School IDs for approved Wyoming Institutional Schools can be found in the WDE Directory under Other Accredited Education Sites. Valid Service School IDs may also be obtained by contacting the WDE Collection Steward at 307-777-8751.
Student Environment	CP – Court-Placed
Exit Type	NULL 469 – Placed in an Institution If a student continues to receive educational services provided by the institution, the student’s resident district must continue to report a primary (non-concurrent) enrollment record for the student and remains accountable for the student.

Residential Treatment Facility Responsibilities for Court Ordered Placements

As per IDEA regulations and Chapter 7 Rules: Services for Children with Disabilities Section 5, the residential treatment facility is responsible for completing the following actions related to a court ordered placement:

- Notify the child’s resident district of the child’s arrival at the facility.
- Collaborate with the resident district to develop a proposed IEP, ensuring that the facility is able to implement special education services, related services, and progress monitoring for the child.
- Assist the resident district in providing procedural safeguards and an explanation to the parent(s), as requested.
- Assist the resident district in conducting the IEP meeting.

- Assist the resident district in writing and disseminating the IEP.
- Monitor student progress on annual goals and ensure the student is making adequate or expected progress. Disseminate progress reports to parents and the resident district, as specified in the IEP.
- Request that the resident district reconvene the IEP team, as necessary.
- If re-evaluation or additional assessments are required, work with the resident district to develop an assessment plan.
- Work with the resident district to conduct required assessment(s), as requested, and if the facility has the resources and expertise to do so.

Approved residential treatment facilities providing educational services for court ordered students, including programs for children with disabilities provided by a Board of Cooperative Educational Services (BOCES), shall bill WDE directly for educational costs of court ordered placements. *W.S. §21-13-315 and WDE Chapter 14 Rules: Education Program Approval of Public and Private Institutions Receiving State Funds for the Education Costs of Students.*

If at any time a child's placement is found to be educationally inappropriate or not the least restrictive placement available, the district should notify the child's DFS caseworker or county district attorney for referral back to the court, along with a recommendation on what would be a more suitable placement. *W.S. §21-13-315 (e).*

Group Home Placements

Students who reside in group homes are entitled to enroll in and attend public school in the school district where the group home is located. Regardless of whether the child was placed in the group home by parents or by a court or other public entity, the child has the same right to attend the local public school as any other child residing in the district. *W.S. §21-4-301.*

When a student with a disability resides in a group home and enrolls in the local public school, the district becomes responsible for developing and implementing the student's IEP, and upholding the student's rights and protections under the IDEA. Procedures for enrolling students with disabilities who transfer between school districts or public agencies in Wyoming in the same school year shall be consistent with 34 CFR §300.323(e). The district in which the student is enrolled maintains primary enrollment, counts the student among its Average Daily Membership (ADM), and includes the student in all required data collections.

Medically Necessary Placements

Unlike other placements where a parent unilaterally decides to dis-enroll his or her child with a disability from public school and place the child in a private school, homeschool, or residential facility under private insurance, when a child is placed by his or her parent(s) in a psychiatric residential treatment facility (PRTF) and the Wyoming Department of Health has determined that the placement is medically necessary under *W.S. §42-4-103(a)(xvii)*, the resident district maintains primary enrollment of the student and responsibility for FAPE.

Upon placement or admittance of a child with a disability in a PRTF as a medically necessary placement, the facility shall notify the WDE and the student's resident district in writing within 72 hours of placement. *W.S. §21-13-336(b).* The "resident school district" in the case of a medically necessary placement is defined as the

district in which the child's custodial parent or guardian resides at the time of the child's placement in the PRTF. *W.S. §21-13-336(k)*.

Within 7 days of receiving notice from the PRTF, the resident school district shall notify the PRTF of the manner in which educational services shall be provided to the child. *W.S. §21-13-336(b)*. The resident district shall either:

1. Request the facility provide the educational services to the student;
2. Deliver the educational services directly to the student; or
3. Contract with the school district in which the psychiatric residential treatment facility is located to provide educational services to the student.

If the resident district chooses to provide educational services directly to the student, or contracts with another district to provide educational services, it shall continue to count the student among its Average Daily Membership (ADM). If the PRTF provides educational services to the student, the resident district must eliminate the student from its ADM. *W.S. §21-13-336(d)*. Regardless of who provides educational services to the child, the district continues to maintain the student's primary enrollment and responsibility for FAPE.

The resident district may choose to allow the PRTF to provide educational services, excluding IEP services, which the district will either provide directly to the student or contract with another district to provide to the student. In either case, the resident district must eliminate the student from its ADM, but may seek reimbursement through the WDE-401 for the cost of the IEP services.

If the PRTF does not receive notification from the school district regarding educational services for the student within 7 days, as required by *W.S. §21-13-336(b)* the facility will provide educational services to the student, provided the facility has an education program certified and approved by the WDE.

Resident District Responsibilities for Medically Necessary Placements

Because this type of placement requires approval by the Wyoming Department of Health in order to qualify as a medically necessary placement, the resident district adheres to the procedures outlined in *W.S. §21-13-336* and Chapter 7 Rules: Services for Children with Disabilities Section 5(h)(i), *Residential Placement by Another Entity*. A "public entity," under Chapter 7 Rules, is defined as a "public agency or court."

As per *W.S. §21-13-336* and Chapter 7 Rules: Services for Children with Disabilities Section 5(h), the resident district is responsible for completing the following actions related to medically necessary placement of students with disabilities:

- Within seven (7) days of receiving written notice from the PRTF that the child has been placed or admitted to the facility, notify the PRTF as to the manner in which educational services shall be provided to the child.
- Adjust the child's ADM in the student information system, as necessary.
- If utilizing an electronic records management system, add designated PRTF staff members as team members on the system.
- Initiate action to develop, review, or revise the IEP.
- Schedule change of placement IEP meeting.
- Send Notice of Meeting to required members of the IEP team.
- Collaborate with residential treatment facility staff to develop a proposed IEP, ensuring that the IEP is

reasonably calculated to enable the student to make appropriate progress, in light of his or her unique circumstances.

- Provide procedural safeguards and an explanation to the parent(s).
- Conduct the IEP meeting.
- Write and disseminate the IEP.
- Complete and send Prior Written Notice, noting the change of placement.
- Evaluate student progress reports to ensure the student is making adequate or expected progress on annual goals. Reconvene the IEP team, as necessary.
- Ensure the student receives FAPE throughout the placement
- Obtain consent for evaluation, as necessary. Develop an assessment plan.
- Conduct required assessment(s), or arrange with a third party to conduct required assessment(s)
- Accurately report student data for medically necessary placed students on all WDE data collections

PRTF Responsibilities for Medically Necessary Placements

As per W.S. §21-13-336 and Chapter 7 Rules: Services for Children with Disabilities Section 5(h), the PRTF is responsible for completing the following actions related to medically necessary placements:

- Within seventy-two (72) hours of placement, notify the WDE and the child's resident district of the child's arrival at the facility as a medically necessary placement, and inquire as to the manner in which educational services should be provided.
- Collaborate with the resident district to develop a proposed IEP, ensuring that the PRTF is able to implement special education services, related services, and progress monitoring for the child.
- Assist the resident district in providing procedural safeguards and an explanation to the parent(s), as requested.
- Assist the resident district in conducting the IEP meeting.
- Assist the resident district in writing and disseminating the IEP, as requested.
- Monitor student progress on annual goals and ensure the student is making adequate or expected progress. Disseminate progress reports to parents and the resident district, as specified in the IEP.
- Request that the resident district reconvene the IEP team, as necessary.
- If re-evaluation or additional assessments are required, work with the resident district to develop an assessment plan.
- Work with the resident district to conduct required assessment(s), as requested, and if the PRTF has the resources and expertise to do so.

Data Collection

Students placed in a PRTF by parents and approved by the Wyoming Department of Health are still the responsibility of the student's resident school district and must be reported by the district with a primary enrollment record on the WDE-684. If the district has an active IEP for the student, the district will report the SPED data. When entering data for medically necessary placed students on the WDE-684, districts must use the following codes:

WDE-684 Data Element	Code for Medically Necessary Placed Students
Student Concurrent Enrollment	N
Service School ID	Service School IDs for approved Wyoming Institutional Schools can be found in the WDE Directory under Other Accredited Education Sites. Valid Service School IDs may also be obtained by contacting the WDE Collection Steward at 307-777-8751.
Student Environment	MN - Medically Necessary
Exit Type	<p>NULL 469 – Placed in an Institution</p> <p>If a student continues to receive educational services provided by the institution, the student’s resident district must continue to report a primary (non-concurrent) enrollment record for the student and remains accountable for the student.</p>